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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

B5

DATE: JUN 20 2011 OFFICE: TEXAS SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a physician and researcher specializing in pediatric infectious diseases. At the time he filed the petition, the petitioner was a postdoctoral fellow at the Baylor College of Medicine (BCM), Houston, Texas, and a graduate student at the University of Texas School of Public Health. Since July 1, 2010, the petitioner has worked for Blank Children's Hospital, Des Moines, Iowa.

The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel, witness letters, and copies of prior submissions.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the

Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on September 10, 2009. In an introductory statement, counsel claimed that the petitioner "has blazed a trail in pediatric research and leadership" and is responsible for "extraordinary **original medical research breakthroughs of major significance**" (counsel's emphasis). With respect to the petitioner's future plans, counsel claimed that the petitioner "will likely not work for any one traditional employer. . . . [He] may obtain grants to

continue his research independent from any particular institution or employer. In addition, [the petitioner] may act as a consultant to a number of medical research institutions in the U.S."

In an August 27, 2009 statement that accompanied the initial filing, the petitioner described his work and qualifications:

> In June 2007, I moved to Houston to pursue my career as an infectious disease specialist at Baylor College of Medicine and Texas Children's Hospital (TCH). . . . Here I have been able to develop my career to the highest of my abilities in both the clinical and research settings. . . .
>
> My specific interest is vaccine-preventable diseases in which I have centered all my research work as well as my educational activities. . . .
>
> In a different aspect of my education, I have started post-graduate training to obtain the degree in Master of Public Health, major in Epidemiology at the University of Texas. This additional degree will enhance my knowledge in epidemiology and biostatistics and will allow me to design and implement public health policies in the future. I will pursue a career in public health and apply my training in a State Health Department to improve the health of Americans in the infectious diseases field.

The petitioner also asserts that he plans to continue teaching and conducting research, but elsewhere in his statement, the petitioner repeats that he "will become an important member of a State health department and apply my knowledge to implement new strategies to prevent and treat infectious diseases appropriately." This stated plan to work for a state government agency contradicts counsel's claim that the petitioner "will likely not work for any one traditional employer," but instead work as a consultant and freelance researcher.

With respect to his research activities, the petitioner stated that he had participated in several projects, such as a study "about the consumption of alcohol and the risk of HIV acquisition," a survey "to determine the time lapsed [from] the first symptom to the diagnosis of tuberculosis," and "an epidemiological study of pertussis, also known as whooping cough, in Hispanic children and adolescents in Houston."

The petitioner submitted five witness letters with his initial filing. Counsel claimed that the petitioner "is widely regarded by physicians/ scientists throughout the world as one of the top few in his field worldwide," but all of these initial letters were from [redacted]. Professor [redacted] stated:

> We recruited [the petitioner] to our Pediatric Infectious Diseases post-doctoral fellowship program in 2007 because of his outstanding academic record. . . . [The petitioner] is currently under my mentorship.

> During his fellowship training, [the petitioner] has demonstrated a remarkable interest in vaccine-preventable diseases research and has become a valuable asset to [the] Center for Vaccine Awareness and Research team. He has been investigating epidemiological aspects of pertussis, whooping cough, which has become the only vaccine-preventable disease in the U.S. that is not controlled. . . . [The petitioner] has completed the largest study of pertussis in newborn infants ever published. . . . Currently, [the petitioner's] major research involves preventing pertussis or whooping cough in children less than 6 months of age, the population most likely to be hospitalized or to die. Research in this field is of absolute necessity, and I anticipate this work will be groundbreaking in the field of vaccine research. In addition, [the petitioner] has recently joined me and other investigators in a project aimed to evaluate the long term outcomes (3-11 years) of neonates and young infants with group B streptococcal (GBS) meningitis. . . . The data obtained from this study will guide cost-benefit analyses when vaccine becomes available for public use.

[redacted] stated: "During the past two years, he has become a critical member of our research team and his permanent residency is absolutely essential to our ongoing clinical research program in pediatrics." Concerning this statement, the record contains no evidence that [redacted] intended to employ the petitioner on a permanent basis, or that the petitioner intended to stay at [redacted] after completing his postdoctoral fellowship. The petitioner already held valid H-1B nonimmigrant status permitting him to complete his fellowship at [redacted] and therefore he required no further immigration benefits, permanent or otherwise, to complete his training there.

Indeed, another witness, clinical instructor [redacted] acknowledged that, upon completing his fellowship, the petitioner "will leave Baylor College of Medicine to head an Infectious Diseases Division at Blank Children's Hospital in Des Moines, Iowa." Thus, at least some [redacted] were aware of the petitioner's future plans as early as August 2009. [redacted] stated that the petitioner "is a leading clinician and pediatric researcher of extraordinary ability who is at the top of his field and made seminal contributions to the areas of public health and vaccine-preventable diseases research." [redacted] offered little to support this claim, except to describe the petitioner's various research projects and to praise his clinical skill.

[redacted], an assistant professor at [redacted] petitioner to be "one of the most gifted and talented clinicians that [sic] with whom I have had the privilege to work," and "exceptional" "[i]n the field of clinical research." [redacted] pronounced the petitioner's pertussis study to be "ground-breaking."

Another associate professor, [redacted] deemed the petitioner "to be in the top 1% of Pediatric Infectious Disease trained physicians in the nation." The witnesses generally described the petitioner's work at [redacted] sometimes with a brief synopsis of his earlier training elsewhere.

The petitioner submitted documentation relating to his earlier work, showing, for instance, that he made a presentation at a World Health Organization conference in Thailand in 2004. This documentation, however, does not self-evidently show the petitioner's eligibility for the waiver.

A section of the record labeled "Awards and Honors for Excellence in the Field" includes the following exhibits:

- A letter informing the petitioner of a $500 Young Investigators Travel Award to attend a Pediatric Academic Societies (PAS) meeting in Baltimore in 2009. The letter contains no other information about this award.

- A letter soliciting nominations for the 2010 Society for Pediatric Research (SPR) Young Investigator Award, a "highly prestigious" award that "includes a $2,000 honorarium." This letter describes the requirements for the award, but it does not show that the petitioner received such an award. The record does not establish that the $500 PAS Young Investigators Travel Award is the same as the $2,000 SPR Young Investigator Award. The travel award appears to be, as its name suggests, a minor form of financial aid to facilitate conference attendance, rather than a particularly prestigious recognition of the recipient's work.

- Photographs of two June 22, 2007 plaques from Miami Children's Hospital, showing that the petitioner received the [redacted] Educational Award and the [redacted] Award for the Resident of the Year. The first plaque indicated that the petitioner received the award "[f]or his dedication, accomplishments and his academic achievements as recognized by the attending physicians at Miami Children's Hospital." The second plaque indicated that the petitioner received the award "[f]or his dedication, accomplishments and his academic achievements as recognized by his fellow residents at Miami Children's Hospital."

- A message from the Infectious Disease Society of America (ISDA), informing the petitioner that his "case has been selected for presentation at this year's Pediatric Fellows' Day session at the 2008 ICAAC/IDSA annual meeting," with "a travel grant of $800 to [attend] this meeting." The record says nothing else about this presentation.

- A message from the Texas Pediatric Society, informing the petitioner that his "poster submission has been chosen for Honorable Mention" in the 2008 Resident & Fellow Poster Contest.

- A certificate from the University of Colorado School of Medicine, attesting that the petitioner "served as a Visiting Medical Student" for six weeks in the autumn of 2000. The petitioner did not explain how this certificate is either an award or honor for excellence.

The submitted materials show that the petitioner has been successful during his medical training, but they do not lead to the conclusion that the petitioner "is widely regarded by physicians/scientists throughout the world as one of the top few in his field worldwide," as claimed by counsel. The record, rather, indicates that at the time of filing in 2009, the petitioner's own mentors considered him to be a trainee rather than a fully qualified physician/researcher in his own right. Consistent with this finding are membership documents calling the petitioner an "ISDA Member In Training" as late as May 2009.

A medical researcher, even one still in training, can have a wider impact through published and presented research, but such research does not, by its mere existence, show eligibility for the waiver. It is necessary, therefore, to examine the impact of the petitioner's published and presented work. A list of the petitioner's "research experience and publications" shows 13 items, including the petitioner's doctoral thesis, six oral or poster presentations, one future presentation, three published articles, one article in press, and a fifth submitted for publication. The petitioner submitted copies of these materials, but no objective evidence of the impact of this work on the wider field except for evidence of one independent citation of one of his articles.

On December 11, 2009, the director issued a request for evidence, instructing the petitioner to submit verifiable evidence of "specific prior achievement with some degree of influence on [the] field as a whole." In response, the petitioner submitted a supplemental brief from counsel, containing numerous unsubstantiated assertions, such as the claim that the petitioner is "[w]ell known as an expert in [his] field." The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel stated that a waiver would serve the national interest because "[t]he labor certification process is a lengthy one that is taking at least 3 years to complete." Counsel provided no evidence to support this claim, and the record shows that counsel's factual claims are often suspect. (In the same brief, counsel again claimed that the petitioner "will not work for any one traditional employer," even though the petitioner himself had repeatedly contradicted that claim and did so again in response to this very notice.) Even if counsel had substantiated this claim, the national interest waiver is not simply a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *See Matter of New York State Dept. of Transportation* at 223.

In a new statement, the petitioner emphasized his academic achievements and the prestige of various institutions where he has trained. As previously noted, exceptional ability is not, itself, automatic grounds for the waiver, because Congress plainly held that aliens of exceptional ability are typically subject to the job offer requirement. At issue here is not the quality of the petitioner's education and professional training, but rather his impact and influence in comparison with others in his specialty.

Two new letters accompanied the petitioner's response to the director's notice. These letters, like all the previous letters, are from [redacted], associate professor at [redacted], praised the petitioner's "outstanding academic record," his "remarkable interest in vaccine

preventable diseases research," and the "absolute necessity" of further research into neonatal pertussis.

[redacted], an assistant professor at [redacted], stated: "My colleagues and I consider [the petitioner] to be amongst the most talented pediatric infectious diseases physicians trained in the nation." The record is devoid of evidence that researchers outside [redacted] share this opinion.

The opinions of experts in the field are not without weight and the AAO has considered them above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

The letters considered above primarily contain bare assertions of widespread recognition without showing how the petitioner's contributions have influenced the field and distinguished the petitioner from others in that field. The petitioner did not submit letters from independent references who affirm their own reliance on the beneficiary's work or who were even simply familiar with his work through his reputation.

The petitioner submitted evidence of a second citation of his work, specifically a 2008 paper in which two of the petitioner's former collaborators at the World Health Organization self-cited "unpublished data" from their previous work with the petitioner. Self-citation in this manner does not establish wider impact.

The petitioner submitted "Published Material About the Alien," specifically an online article that described how the petitioner had spotted a relatively rare condition in a young patient. The article does not demonstrate the petitioner's impact or influence on the field of pediatric medicine, and it would not do so even if the author were not [redacted] who referred to the petitioner as his "friend and colleague." This article by a [redacted] does little to demonstrate that the petitioner's work has attracted notice outside of [redacted].

The director denied the petition on March 3, 2010, stating: "The record demonstrates that the beneficiary is a qualified medical researcher who has received training at well-regarded institutions, but there is no credible support for the claim that the beneficiary is an internationally renowned physician/researcher whose methods have influenced the entire field of pediatric infectious disease research." The director acknowledged the intrinsic merit and national scope of medical research, but found that the petitioner does not qualify for the waiver merely by virtue of pursuing such research.

On appeal, counsel repeats the claim that the petitioner is "[w]ell known as an expert in the field of **Pediatric Infectious Diseases**" (counsel's emphasis), although the petitioner has repeatedly failed to submit anything to show that he is "well known" outside of Baylor College of Medicine. Counsel maintains that the petitioner's "innovative research has enormous implications for the treatment of infectious diseases," but the record lacks objective evidence showing that the field of pediatric medicine has reacted differently to the petitioner's research than to that of countless other researchers. Counsel notes disturbing epidemiological trends, such as increasing incidence of pertussis, but the record does not show that the petitioner has been largely responsible for reversing or mitigating those trends.

Counsel lists various credentials and accomplishments without elaboration, as though, for instance, the petitioner's $500 travel award were, by itself, persuasive evidence of the petitioner's eligibility. Counsel asserts that the petitioner "has established international recognition as one of the very best in the field," but this claim continues to lack credible and persuasive support.

The petitioner submits three new witness letters on appeal, once again all from [redacted] members, each of whom had written previous letters on the petitioner's behalf. Counsel describes these letters as "updated," but they differ little from the same witnesses' previous letters. Indeed, the "updated" letter from [redacted] appears to be the same letter as before, with a new date. The only significant change evident in a new letter from [redacted] is the addition of recent articles to a discussion of the petitioner's published work. [redacted] s new letter differs little from her previous letter except that, whereas she originally described an article as having been submitted for publication, she now reports that the article has been published.

The record shows that the petitioner is a capable and dedicated physician and researcher, but it does not support the hyperbolic and repetitive claims set forth in furtherance of the waiver claim.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.